IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 689 OF 2004

IN

SUMMARY SUIT NO. 1495 OF 2003

Texas Instrumentas Singapore (P) Ltd .....Plffs.
vs.
Zenith Semi Constructors P.Ltd .....Defnds.

Zal Andhyarujina and Ashu Thakkar i/b. A.R.A law for the plffs.

R.M. Pandey for the defends.

CORAM: S.U. KAMDAR, J.

DATE : 13th September, 2005.

P.C. :.

1. The present suit is filed for goods sold and delivered by the plaintiff to the defendants inrespect of the outstanding amount. The total claim inrespect of the goods sold and delivered an outstanding amount is due and payable of sum of Rs.25,42,996.92/-. The defendant has raised three

defences :

2. Firstly it is contended that this court has no jurisdiction to entertain and try the suit because the goods are dispatched from Singapore to Vashi where the defendants are carrying on business and therefore no part of cause of action has arosed in the City of Bombay. However the learned counsel for the defendant has admitted that in so far the defendants are concerned they are carrying on business at Lamington Road, Mumbai. In that view of the matter this court will have jurisdiction on the ground that the defendant are carrying on business within the local limits of the jurisdiction of this court and cause of action is an alternate available mode and not in substitution of the fact that the defendants are carrying on business in Mumbai. Once it is found that the defendants are carrying on business in Mumbai then irrespective of the cause of action the defendants can be sued in Mumbai.

3. The next contention raised by the learned

counsel for the defendant that there is no written contract between the parties. In the present case the written agreement can be evidenced from various documents such as delivery receipts and proof of acknowledgement and therefore the said contention has no merits.

4. The third contention raised by the learned counsel for the defendants is that the contract has been terminated on 24.11.2000 and the invoices are of the year 2001. It is his contention that once the agreement is terminated the question of supply of goods does not arise. However the learned counsel for the plaintiff has drawn my attention to Ex.F1 and F2 being letters dated 5.1.2000 and 15.12.2000 in which the defendant has requested the plaintiff that even though the distribution agreement has been terminated the plaintiff should permit the distribution of the goods on the basis of seller status. In para-11 it has been stated by the plaintiff that pursuant to the aforesaid representation the said goods have been dispatched to the defendant and the defendants are liable to

pay the said amount. In that view of the master even inrespect of the last contention I do not find any merits and reject the same.

5. However with a view to defend the suit, I direct the defendants to deposit Rs.15 lacs within a period of 6 weeks failing which the plaintiff will be entitled to the decree. The amount so deposited will be invested by the Prothonotary and Senior master in fixed deposits of any nationalised bank initially for a period of three years and renew the same from time to time till further orders.

6. If the amount is paid as aforestated, then suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

sd/-

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